

SUMMARY MINUTES DURHAM BOARD OF ADJUSTMENT

MAY 23, 2000

The meeting was called to order at 8:30 a.m.

ROLL CALL

The Clerk called the roll and recorded attendance as follows:

MEMBERS SEATED

Lavonia Allison
William Brian
Louis Goetz
Evelyn Lovett
Corinne Mabry
David Smith
Connia Watson

MEMBERS NOT SEATED

James Edney
Kate Fulkerson
Kathy Wright-Moore

MEMBERS ABSENT

STAFF PRESENT

Brenda J. Daniel, Clerk, Board of Adjustment
Cassandre' Haynesworth, Planning Staff
Betty Johnson, Planning Staff
Karen Sindelar, Deputy City Attorney
Lowell Siler, Deputy County Attorney

SWEARING IN OF WITNESSES

The Chairman administered the oath to the following applicants and witnesses:

Betty Johnson
Joseph Neff

Cassandre' Haynesworth
Tom Miller

HEARING AND DETERMINATION OF CASES

Chairman Watson noted that since the two cases on the agenda today are at the same address he would indicate for the record that the Board's Rules of Procedure would govern the hearing and that he felt no Board member should need to request early dismissal.

Ms. Johnson asked that all staff reports and materials submitted at the meeting be made part of the permanent record with any additions, deletions, and or corrections that may be necessary. All Board members concurred.

Chair Watson read the following statement into the record:

This Board is a quasi-judicial Board and as such, all testimony will be recorded. The process is similar to a court procedure. First the staff will present an overview of the case, then the applicant presents its evidence.

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The opponents, if there are any, will then present their evidence. The applicant may then present its rebuttal. Board members may ask questions at any time. All testimony is given under oath. In a few minutes I will give the oath to all witnesses as a group. All witnesses are asked to sign the roster at the podium if you have not done so.

All witnesses should come to the podium and speak directly into the microphone so the testimony can be recorded on tape. Written evidence shall be formally presented to the Chair and a determination will be made about whether it should be accepted. Either side can inspect written evidence. All evidence, written and oral, can be objected to. Witnesses are subject to cross-examination.

Opposing representatives will have a chance to question witnesses after all the witnesses for the other side have testified. If you wish to cross-examine, you must raise your hand when I ask for cross-examination and I will recognize you.

The Board will vote on each case after the presentation of all evidence, pro and con, concerning the case. The law requires that in order for an applicant's request to be granted 5 of the 7 voting Board members must approve the request.

He also noted that Board members may have visited the site in preparation for this meeting.

The Board will make a decision on each case after hearing all evidence, both pro and con on the issue.

He then asked the Clerk to call the first case.

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SEATED: Ms. Allison, Mr. Brian, Mr. Goetz, Ms. Lovett, Ms. Mabry, Mr. Smith, Mr. Watson

Case B00-12: A request by Joseph Neff and Karen Otsea for a Variance of 1.5 feet from the total required 28-foot side yard setback as per Section 19.7.1 of the Durham Zoning Ordinance. The property is located at 2301 W. Club Boulevard and is zoned R-8. Tax Map 44-2-23.

Note: Ms. Johnson noted for the Board that the staff has learned, since preparation of the staff report, that some measurements on this case have been transposed. As a result of that the information in the staff report is incorrect. She noted that the applicant has been informed that this case should be continued until the correct information is presented to the staff and staff has had an opportunity to review and verify it. Staff also asked that the applicant submit verified measurements on this case.

Ms. Allison made a motion, seconded by Mr. Brian that this case be continued until such time that the applicant has presented to the staff the information they requested.

Ms. Sindelar noted that she had been contacted on yesterday by the applicant for this case and was told that the variance being requested was less than the 1.5 foot requested in the application and was actually a number of tenths of a feet. She said at that, she felt the Board could hear the case today.

Ms. Allison noted that hearing this case today, she felt, would set a precedent. She said if staff has indicated that they do not have correct information, she feels it should be continued until the required information has been submitted to the staff. Hearing this today would allow other applicants to come forward saying "it's only a minor error".

Mr. Brian asked Ms. Haynesworth if staff has carefully reviewed the plans submitted to determine if this is the only problem. Ms. Haynesworth noted that staff has not had an opportunity to verify whether the initial survey submitted is correct. She said after speaking with applicant, the applicant indicated to her that the surveyor had given her wrong information regarding the distance of the home from the property lines.

Mr. Brian noted that he agreed with Ms. Allison.

Ms. Johnson noted that the applicant was to submit new information to the Board this morning. Mr. Watson asked if the staff has had an opportunity to authenticate that information. Ms. Johnson said no.

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Ms. Allison asked that the question now be called on her motion.

The vote on the motion was as follows:

Yes: Ms. Allison, Mr. Brian, Mr. Goetz, Ms. Lovett, Ms. Mabry, Mr. Watson

No: Mr. Smith

The motion was approved 6 to 1.

This case has been continued to the June 27th meeting.

At this point Mr. Neff said if he was allowed to testify he would be able to clear up the misunderstanding the staff has and the cases can be heard today.

He said the 1.5 foot variance he is requesting is more than enough to do what he wants to do on the property.

Mr. Brian suggested that everyone get their act together and bring the case forward as a regular case. He noted that there is no need for special treatment on this case.

After a very lengthy discussion, the Chairman noted that the motion has been made and this case will be continued to the June 27th meeting.

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SEATED: Ms. Allison, Mr. Brian, Mr. Goetz, Ms. Lovett, Ms. Mabry, Mr. Smith, Mr. Watson

Case B00-13: A request by Joseph Neff and Karen Otsea for a Minor Special Use Permit for the expansion of an existing nonconforming single-family residence as per Sections 13.1 and 19.7 of the Durham Zoning Ordinance. The property is located at 2301 W. Club Boulevard and is zoned R-8. Tax Map 44-2-23.

Note: Mr. Goetz noted that it was obvious that the Planning Department staff does not have the information that they need to verify the measurements in order for the Board to make a decision.

Mr. Neff again said he could testify to any discrepancy the staff indicated was in the survey so that the Board could hear this case today.

Mr. Tom Miller also said he felt the applicant could be heard today based on the new information they had with them and wanted to present to the Board.

After a very lengthy discussion, Mr. Goetz made a motion, seconded by Ms. Allison, to continue this case to the June 27th meeting.

The vote on the motion was as follows:

Yes: Ms. Allison, Mr. Brian, Mr. Goetz, Ms. Lovett, Mr. Watson

No: Ms. Mabry, Mr. Smith

The motion passed 5 to 2.

This case will be continued to the June 27th meeting.

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Approval of Summary Minutes

Mr. Brian made a motion, seconded by Mr. Goetz, to approve the summary minutes of the April 25, 2000 meeting with one noted change. The motion passed unanimously.

Approval of Denial Order

The denial order for Case B99-65, Furney Brown, was approved on a motion by Ms. Allison, seconded by Mr. Brian. The Board requested that the second page begin with "It has not been proven:" and that each of the findings be listed with bullets.

Mr. Watson asked the Board members who would be absent from the June 27th meeting. Mr. Watson indicated he would be absent from that meeting and Mr. Brian would chair that meeting.

Additional Meeting in July

The Board members noted that the agenda for July has a large number of cases on it and suggested that two meetings be held in July. July 11th will be the first meeting in July and the regular meeting will be held on July 25th.

There being no further business to come before the Board, the meeting was adjourned at approximately 9:40 a.m.

Respectfully submitted,

**Brenda J. Daniel, Clerk
Durham Board of Adjustment**